IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3552 OF 2001.

(Smt. Shantabai Wd/o.Gopalrao Patil & oth. Vs. The Nagpur Improvement Trust & oth.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri V.G. Bhamburkar, Advocate for Petitioners.
Shri S.K. Mishra, Advocate for Respondents/N.I.T.

CORAM : A.H.JOSHI AND
R.C.CHAVAN, JJ.

DATED : AUGUST 08, 2007.

1. In view of order passed in M.C.A. No.388 of 2004 the petition is taken up for admission hearing.

2. Heard learned Advocate Shri Bhamburkar for the petitioner and learned Advocate Shri Mishra for respondent No.1.

3. We find that the petitioner has challenged notices, which are in common format, amounts and other details in relation to each of the petitioner, however, differ.

4. The respondent No.1 has charged development charges

at the flat rate of Rs.16/- per sq.ft. towards land area of the plots in question of the respective plot owners and @ Rs.6/- per sq.ft. towards actual area under construction. The amount calculated in relation to each of the plot owner is given in the annexure to the notice. Any dispute or controversy has not been raised by the petitioners as to correctness of the amount referred therein. From the point of view of calculation or arithmetical aspect.

5. The challenge in the petition is based on the ground that the respondent No.1 is not entitled to charge amount since part of the development, namely, W.B.M. road and sewer line was already developed while developing layouts.

6. According to the respondents, the work of internal roads was not up to the required norms and which were required to be substantially widened and redone as well ashphalting was required to be done. Similarly, water line was required to be laid, in fact, and no controversy as to sewer line is raised.

7. Further according to respondent No.1 as is seen from the submissions filed and documents annexed thereto, the Nagpur Improvement Trust decided to charge on flat rate amount of Rs. 16/- per sq.ft. for the development of unauthorised layouts and Rs. 6/- per sq.ft. towards regularization charges on the basis of actual construction irrespective of status of amenities available and N.I.T. look up to develop the layouts to required level.

8. According to respondent No.1 the State Government has authorised the Planning Authority to determine development charges for petitioners in its area or jurisdiction, and under Gunthewari Act development charges of the unauthorised layout for residential area are fixed at Rs.22.34 ps. however, by the board resolution the charges have been fixed to Rs.16/- per sq.ft. irrespective of the nature of work required to be undertaken.

9. In this background, we find that while fixing the charges under the Gunthewari Act the doctrine of *quid pro quo* is not applicable and irrespective of the status amenities, in existence the respondent No.1 took up to develop the area.

10. We further find that the question as to whether and to what extent work of roads was done and in what manner and to what extent it was required to be done by respondent No.1 is matter of factual dispute. Moreover, we accept that the rule of "*quid pro quo*" has no application to the demand under challenge. The services to be rendered has no nexus to the charges.

11. In this background, we find that the writ petition does not merit any interference and hence, deserves to be dismissed.

12. At this stage, the learned Advocate for the petitioner prays for permission to withdraw the petition, which according to him,

will entitle the petitioners to raise the dispute by way of civil suit, if so advised. Leaving liberty to the petitioners to seek appropriate remedy, the petition is allowed to be withdrawn.

JUDGE. **JUDGE.**

RR.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

MISC. CIVIL APPLICATION NO.388 OF 2004
IN
WRIT PETITION NO.3552 OF 2001.

(Smt. Shantabai Wd/o.Gopalrao Patil & oth. Vs. The Nagpur Improvement Trust & oth.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Shri V.G. Bhamburkar, Advocate for Petitioners.
Shri S.K. Mishra, Advocate for Respondent/N.I.T..

CORAM : A.H.JOSHI AND
R.C.CHAVAN, JJ.

DATED : AUGUST 08, 2007.

1. We find that while hearing Writ Petition No.3552 of 2001 main issue got some how sidetracked. During course of arguments advanced by the petitioner attention of this Court was focused as to whether the respondents were entitled to charge any amount towards the underground sewer line, which was already laid while development of layout. It is seen that, in this background, the statement of Corporation came to be recorded that the first respondent did not charge anything towards sewer line in the background that the entire facts of the judgment got side tracked.

We find that the observations in the order dated 7th April, 2004 were thus a consequence of aforesaid misdirection received in the process of hearing of writ petition. Therefore, we are satisfied that there is error apparent on face of record in regard to entire matter involved.

2. In these circumstances, we find that the writ petition deserves to be heard on merit by recalling order sought to be reviewed; and for that purpose the order passed by this Court on 7th April, 2004 is recalled M.C.A. is allowed and accordingly disposed of.

3. Writ Petition No.3552 of 2001 is taken up for admission hearing.

JUDGE. **JUDGE.**

RR.